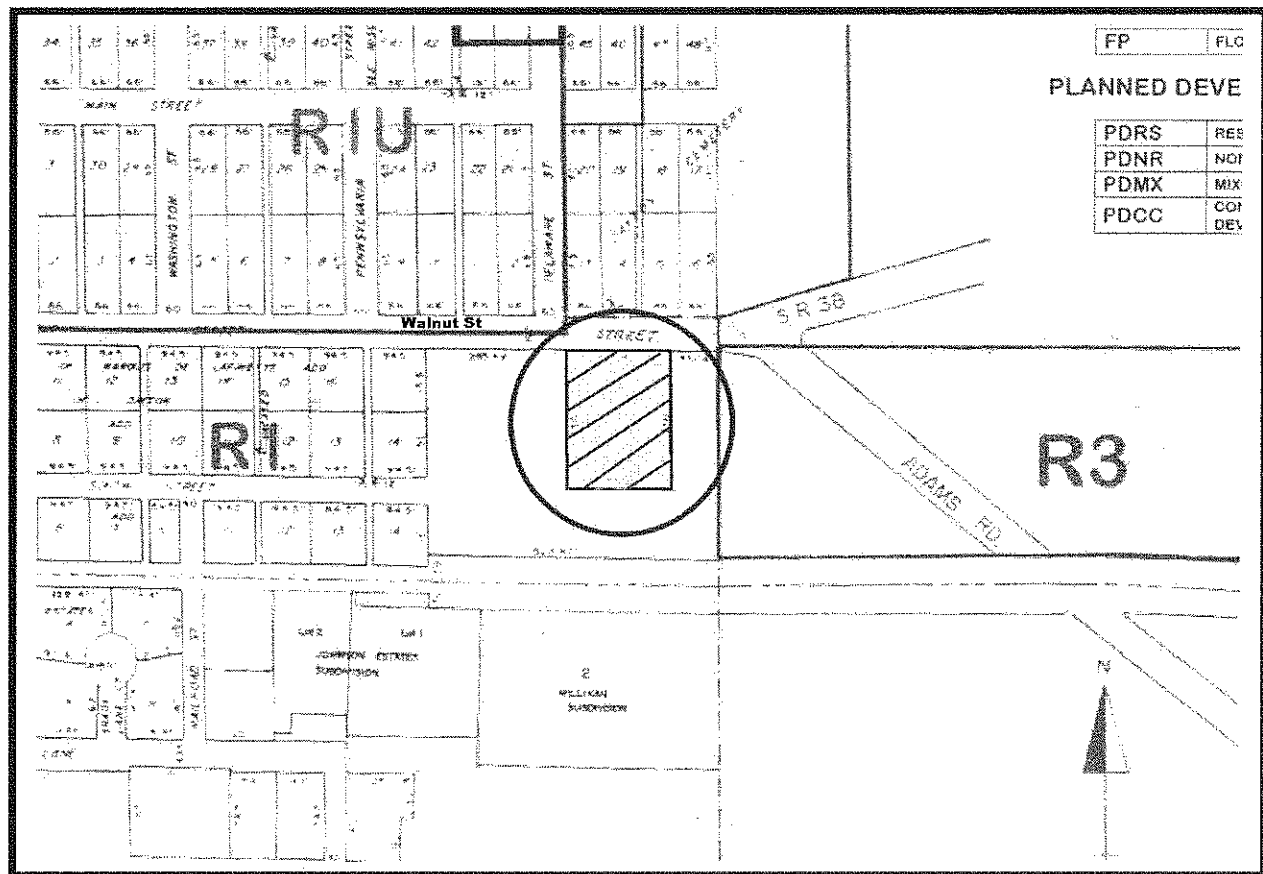


**Z-2521**  
**DAYTON MASONIC LODGE #103**  
**(R1 to NB With Commitment)**

**STAFF REPORT**  
**May 9, 2013**



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**Staff Report**  
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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioner, as representative of the owners, Dayton Masonic Lodge #103 is requesting the rezoning of 1.12 acres from R1 to NB with a commitment. The property is more commonly known as 773 Walnut Street (SR 38) at the eastern edge of the town of Dayton, Sheffield 9 (NW) 22-3.

**ZONING HISTORY AND AREA ZONING PATTERNS:**

The subject site is currently zoned R1 (single family residential) and has been since a town-wide rezone in 1977 changed it from GB (general business) to R1. Surrounding zoning on the south side of Walnut is R1, with a tract of R3 (multi family residential) to the east, bisected by Adams Road. Zoning on the north side of Walnut is more varied: AW (agricultural wooded) and R1U (single-family residential urban).

**AREA LAND USE PATTERNS:**

This site, located at the far eastern edge of the town of Dayton functions as a gateway to this very residential side of town. A cemetery is located north across Walnut Street and residences line both sides of Walnut closer towards the center of town.

The Masonic Lodge has been located on the property, according to historic aerials, since at least 1963.

**TRAFFIC AND TRANSPORTATION:**

An existing graveled U-shaped driveway provides access to the site from Walnut Street. The parking requirement for a membership organization (SIC 86) is one space per 200 square feet of gross floor area. Based on assessor's records, the hall has 4,192 square feet of area, requiring 21 parking spaces. There is ample room on the 1.12 acre site to provide all the required parking, though existing parking is haphazard, not delineated and unpaved.

All driveways, parking and maneuvering aisles are required to be paved in the NB zone.

**ENVIRONMENTAL CONSIDERATIONS:**

A 20' wide Type C bufferyard is required where NB zoning abuts the surrounding R1 zones. However, the ordinance states that petitioner must only install ½ of the required

bufferyard because the surrounding property is unimproved. Additionally, existing plant material may be counted by the Administrative Officer as contributing to the total bufferyard. The property lines are lined with shrubs.

**STAFF COMMENTS:**

This use, a membership organization (SIC 86), has been on the site since 1963, before zoning existed in the county and before Dayton was an incorporated member of the Area Plan Commission. In 1977, this property, which was zoned GB at the time, was rezoned to R1 through an overall town rezone (Z-855). It remained R1 when the second town rezone was completed in 1998 (Z-1770).

Petitioner first approached staff in early 2013 with the intent of installing larger signage than is currently on site. Staff discovered the use is non-conforming, and that a non-conforming use may continue, as long as “no additional or larger signs are erected” (UZO 5-1-2(c)(4)). In order to make the use conforming and the ability to construct a larger sign, petitioner had to rezone. Membership organizations are only permitted in select commercial and industrial zones, not in the R1 zone.

The first request submitted to staff was a rezone from R1 to NB, slated for the March APC meeting. However, the town had concerns regarding the future land use possibilities of the NB zone at this gateway to Dayton. Staff suggested a compromise of a zoning commitment that would restrict potentially incompatible or undesirable uses. Petitioner agreed and continued the request until the moratorium on commitments was over, all jurisdictions passed the by-law amendment that allowed them and worked with both staff and the Town of Dayton to draft a commitment that was agreeable to all parties involved. The commitment submitted with this case (see attached) allows only membership organizations on the site; no other uses are permitted. This commitment effectively requires a rezone if the use ever changes from a membership organization.

While the second version of the Dayton Land Use Plan (1996) calls for limited residential, open space and agricultural at this site, staff recognizes the cooperation between petitioner and the town to achieve a workable solution for all involved. With this incredibly restrictive commitment, petitioner’s use becomes conforming, allowing the ability to expand, repairs in excess of 50% of the structure’s value if damaged and adding additional signage. With that in mind, staff can recommend approval of the rezone request with the submitted commitment.

**REZONE RECOMMENDATION:**

Approval

**COMMITMENT RECOMMENDATION:**

Approval

Key Number 154-08200-0094State Identification Number 79-12-09-131-001.000-013

## COMMITMENT

Commitment made on April 9, 2013, by Dayton Masonic Lodge #103 (the "Petitioner") pursuant to Indiana Code Section 36-7-4-1015.

1. Petitioner makes this commitment as the owner (the "Owner") of certain real estate (the "Real Estate") located in Tippecanoe County, Indiana, commonly known as 773 Walnut Street, Dayton IN and more particularly described on Exhibit A which is attached hereto and incorporated by reference herein.

2. Petitioner has filed a request (with the consent of the Owner) with the Area Plan Commission of Tippecanoe County, Indiana (the "APC"), to rezone the Real Estate from R1 to NB which request is pending before the APC as case no. Z-2521.

3. Petitioner hereby agrees and makes the following commitment in connection with the rezoning request in case no. Z-2521:

The only use permitted on the subject property shall be SIC 86 – Membership Organizations. No other uses otherwise allowed in the NB zoning district shall be permitted.

Petitioner understands and agrees that this commitment is given to the APC, the Executive Director of the Area Plan Commission as the Administrative Officer for Dayton, and a copy has been provided to a representative of the Dayton Town Council (the "Legislative Body") as an inducement for the recommendation for and approval of the rezoning request in case no. Z-2521. Petitioner further understands and agrees that the approval of the rezoning request in case no. Z-2521 by the Legislative Body constitutes good and valuable consideration for the giving of this commitment.

4. This commitment shall be a covenant running with the Real Estate and binding and enforceable against Petitioner, any subsequent owner, or any other person who acquires any interest in the Real Estate. Any change or modification of this commitment shall only be made with the approval of the APC at a public hearing in accordance with all rules and regulations of the APC.

5. Petitioner agrees that each of the following shall each be a "specially affected person" under Indiana Code Section 36-7-4-1015(d)(3) who shall each independently be entitled to bring an action to enforce the terms and conditions of this commitment in the Circuit or Superior Courts of Tippecanoe County, Indiana:

- a. the APC,
- b. the Area Board of Zoning Appeals of Tippecanoe County, Indiana,
- c. the appropriate Administrative Officer designated in the Unified Zoning Ordinance for Tippecanoe County, Indiana,

Robert L. Clemence GM, WPM

By: Robert L. Clemence

Worshipful Master Dayton Lodge #103

STATE OF INDIANA )

)

SS:

COUNTY OF TIPPECANOE )

**BIANCA BULLOCK**

Notary Public, State of Indiana

Before me, the undersigned, a notary public, personally appeared ROBERT CLEMENCE, and acknowledged the execution of the foregoing commitment on APRIL 9, 2013.

Bianca Bullock

, notary public

Resident of Tippecanoe County

My commission expires:

JUNE 30, 2013

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. RLC

This instrument prepared by: Robert L. Clemence